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Decisions of International Tribunals

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Case Comments

Decisions of International Tribunals

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There have been few significant recent developments in cases pending in international tribunals. However, while most of the decisions outlined below were rendered by national courts (in India and Germany), all involve points of general international law applicable to proceedings, and frequently considered, in international tribunals. They have accordingly been included in the within discussion.

Proceedings in the International Court of Justice

In the Barcelona Traction, Light and Power Company, Ltd. proceeding between Belgium and Spain (General List No. 50), Belgium filed its reply last May. The time-limit for the filing of the Rejoinder of Spain has been fixed at October 24, 1967. The Rejoinder is the final written pleading, and the case will be ready for hearing when it is filed.

The proceeding, first instituted in 1958, discontinued pending settlement negotiations in 1961, and resubmitted in 1962, involves the contention of Belgium that the Canadian company at issue (majority-owned by Belgian nationals) was forced into bankruptcy in 1948 by the late Spanish financier Juan March, with connivance of "certain Spanish authorities," for the purpose of facilitating a take-over by Sr. March. Relief sought is a declaration that the Spanish State is obligated to annul the adjudication in bankruptcy and resulting judicial acts, and to respond in damages.

Institution of proceedings between The Netherlands and Denmark, respectively, and the Federal Republic of Germany (General List Nos. 51 and 52), for declaration of principles governing de-

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limitation of boundaries in the North Sea, was reported in the issue of July 1967. The Federal Republic has filed its Memorials, and the following persons have been appointed Agents of the parties:

Denmark—Mr. Bent Jacobsen, barrister at the Supreme Court of Denmark

The Netherlands—Professor W. Riphagen, Legal Adviser to the Ministry of Foreign Affairs

Federal Republic—Professor Dr. Guenther Jaenicke, of the Johann Wolfgang Goethe University, Frankfurt/Main

The Countermemorials of Denmark and The Netherlands are to be filed by February 20, 1968.

Commissioner of Income Tax v. H. E. H. Mir Osman Ali Bahadur, All India Reporter 1966 Supreme Court 1260, involved a claim by the Nizam of Hyderabad of exemption from income tax. The Nizam based his claim on a provision of the Covenant—under which Hyderabad became part of India—guaranteeing the Nizam all of his personal privileges, dignities, and titles; and also, as to the period prior to Hyderabad's accession to India, on an asserted principle of international law exempting sovereigns from taxation. The Supreme Court, after holding that the Covenant provision encompassed only personal privileges of the Nizam as an ex-ruler, first observed that the principle of immunity of sovereigns from taxation is in a process of evolution, and that it has been suggested that such exemption should not extend to commercial property and activities; and that, stemming as it does from the general rule of sovereign immunity, it can no longer be considered an absolute, especially in India, where foreign states and rulers may, by statute, be sued with the consent of the Central Government.

However, the Court preferred to rest its decision on the holding that during the period at issue, Hyderabad was not a sovereign state in the international sense, and that hence the Nizam was not a sovereign ruler. The Court pointed out that during the British regime, the Crown held suzerainty or paramountcy over all of India, including the Indian States; that while the States were responsible for their own internal administration, the Crown had charge of their external relations and defense; and that the States had no international status as such. The Court stated that the lapse of British suzerainty pursuant to the Indian Independence Act of 1947 created a void, leaving the position of the Indian States fluid, but not raising their status to that of international personality.

In *Mammu v. State of Kerala,* All India Reporter 1966 Supreme Court 1614, a larger Bench of the Supreme Court, overruling a prior holding by the Court, held that the word "migrated" in the Constitutional provision foreclosing Indian citizenship to those who migrated to Pakistani territory after March 1, 1947, was used in the broad sense of going from one place to another, not in the narrower sense of moving with the intention of residing permanently elsewhere; and that, accordingly, all persons who voluntarily moved from India to Pakistan after March 1, 1947, other than those going for some specific purpose for a short and limited period, are not Indian citizens, regardless of whether they intended to remain permanently in Pakistan.

At issue in *Scindia Steam Navigation Co. Ltd. v. Union of India,* All India Reporter 1966 Supreme Court 1810, was the question whether a contract had been made for purposes which were exclusively purposes of Pakistan. The Indian Independence (Rights, Property, and Liabilities) Order, 1947 provides, *inter alia,* with reference to contracts made on behalf of the Governor-General in Council before the partition of India, that such contracts made for purposes which are exclusively purposes of Pakistan shall attach to Pakistan, whereas all others shall attach to India. The contract in question was for carriage of timber for railroad uses to Karachi; the plaintiff sued the Union of India for freight due under the contract. On findings that the timber was transported under the contract to Pakistan, that it was in Pakistan on the partition date, that it was all used in Pakistan and that it became the property of Pakistan upon the partition, the Supreme Court held that the contract was exclusively for purposes of Pakistan and that the Union of India had no liability thereunder. In reaching this decision the Court reiterated its previously adumbrated tests attributing heavy weight to ownership of the goods to which a contract relates, and, in the case of contracts of carriage, the destination of the goods.

In *Firm Bansidhar Premsukhdas v. State of Rajasthan,* All India Reporter 1967 Supreme Court 40, the Supreme Court reaffirmed its consistent holding that a State, as state successor to another State (in the present case by merger of the latter into the former), is bound only by those obligations of the merged State which it has expressly assumed or recognized. The Court then held that even when such obligations (in this case exemptions from custom duty) had initially been recognized (in this case by continuance of the exemptions for

a limited period), such recognition could validly be withdrawn and the assumed liability terminated by subsequently enacted law; and that the enactment of a general law with respect to customs duties, making no provision for continuing the exemptions in question, effectively superseded them.

In *Zimmermann v. The Federal Republic of Germany*, 15 E.B.Z. No. 6, pp. 46-58 (1966), the plaintiff sought recovery from the Federal Republic, under the European Convention of Human Rights, for his imprisonment in East Germany on a charge of sedition. Rejecting his claim, the Federal Supreme Court held that Article I of the Convention, guaranteeing protected rights to persons under the sovereignty of a contracting State, refers only to the *de facto* area of sovereignty, since it is only as to this area that a State could be expected to undertake such a guaranty; and that Article 5(5), giving aggrieved persons a direct right to claim damages, relates only to infringements of rights by the public authorities who cannot be held vicariously liable for the acts of persons over whom they have no control.

In *Boeckmans v. The Government of Belgium* (1965), the petitioner had been convicted and sentenced in Belgium for stealing valuables from a lady almost 80 years old. His defense was that she had given him most of the goods in consideration of his being her lover. At the commencement of proceedings before the Belgian Court of Appeal, the President of the Court, before the Court had examined the merits of the case, characterized the defense as "improbable," "scandalous," "false," "ignoble," and "repugnant" and warned Boeckmans that the Court would consider increasing his sentence if the defense were not abandoned. Protesting that the President had prejudged the case, Boeckmans' counsel refused to argue the appeal, and the Court proceeded to enhance the sentence. An appeal to the *Cour de Cassation* in the case was dismissed. The European Commission held that Boeckmans' petition was admissible, and set in motion its procedure for amicable settlement, in the course of which the Belgian Government agreed that Boeckmans had not had a fair hearing, in violation of the Convention of Human Rights, and that he should be compensated.